

ASSEMBLY BILL

No. 1395

Introduced by Committee on Insurance (Perea (Chair), Hagman (Vice Chair), Bonilla, Bradford, Ian Calderon, Cooley, Frazier, Mitchell, Olsen, Torres, and Wieckowski)

March 4, 2013

An act to amend Section 1775.4 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as introduced, Committee on Insurance. Insurance: surplus line brokers.

Existing law requires every surplus line broker to pay annually to the Insurance Commissioner a tax of 3% of the gross premiums charged less return premiums upon business done by the surplus line broker under the authority of his or her license. If the annual tax for the preceding calendar year was \$5,000 or more, existing law requires the surplus line broker to make monthly installment payments on account of the annual tax on business done during the current calendar year. Existing law requires the amount of the payment to be 3% of the gross premiums charged less return premiums upon business done by the surplus line broker during the calendar month ending 2 calendar months immediately preceding the due date of the payment, as specified. Existing law requires a surplus line broker to file a return showing that his or her return premiums exceeded his or her gross premiums even when no payment is payable by the broker.

This bill would delete the provision requiring a surplus line broker to file a return showing that his or her return premiums exceeded his or her gross premiums even when no payment is payable by the broker.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1775.4 of the Insurance Code is amended
2 to read:
3 1775.4. (a) The amount of the payment shall be 3 percent of
4 the gross premiums charged less return premiums upon business
5 done by the surplus line broker during the calendar month ending
6 two calendar months immediately preceding the due date of the
7 payment, as specified in Section 1775.3, excluding gross premiums
8 and return premiums paid by him or her upon business governed
9 by the provisions of Section 1760.5. If during any calendar month
10 those return premiums upon business done by a surplus line broker
11 exceed the gross premiums upon the business done by him or her
12 in that calendar month, then no payment shall be payable by him
13 or her in respect to that calendar month, and he or she may carry
14 forward that excess to the next succeeding calendar month or
15 months and apply it in reduction of the taxable premiums on
16 business done by him or her in that succeeding calendar month or
17 months. ~~Even though no payment shall be payable by the broker,~~
18 ~~he or she shall file a return showing that his or her return premiums~~
19 ~~exceeded his or her gross premiums.~~
20 (b) In determining the applicability of subdivision (a) of Section
21 1775.1 to a surplus line broker who has acquired the business of
22 another surplus line broker, the amount of tax liability of the
23 acquired broker for the immediately preceding calendar year shall
24 be added to the amount of the tax liability of the acquiring broker
25 for the immediately preceding calendar year.
26 (c) All amounts paid, other than penalties and interest, shall be
27 allowed as a credit on the annual tax imposed by Section 1775.5.
28 (d) If the total amount of monthly installment payments for any
29 calendar year exceeds the amount of annual tax for that year, the
30 excess shall be treated as an overpayment of annual tax and be
31 allowed as a credit or refund.
32 (e) A penalty of 10 percent of the amount of the monthly
33 payment due shall be levied upon and paid by any surplus line
34 broker who fails to make the necessary payment within the time
35 required, plus interest at the rate of 1 percent per calendar month

1 or fraction thereof from the due date of the payment until the date
2 payment is received by the commissioner, but not for any period
3 after the due date of the annual tax. The penalty and interest shall
4 be applied as prescribed in Section 12636.5 of the Revenue and
5 Taxation Code. The commissioner may remit the penalty in a case
6 where he or she finds, as a result of examination or otherwise, that
7 the failure of, or delay in, payment arose out of excusable mistake
8 or excusable inadvertence.

9 (f) For any part of a payment required that was not made within
10 the time required by law, when the nonpayment or late payment
11 was due to fraud on the part of the taxpayer, a penalty of 25 percent
12 of the amount unpaid shall be added thereto, in addition to all other
13 penalties otherwise imposed.

14 (g) The commissioner, upon a showing of good cause, may
15 extend for not to exceed 10 days the time for making a monthly
16 payment. The extension may be granted at any time, provided that
17 a request therefor is filed with the commissioner within or prior
18 to the period for which the extension may be granted. Any surplus
19 line broker to whom an extension is granted shall, in addition to
20 the monthly payment, pay interest at the rate of 1 percent per
21 month, or fraction thereof, from the due date until the annual tax
22 due date.